

HARPER'S AND THE GALAXY  
FOR APRIL.

We admire the even tenor of its course quite as much as we admire what is contained, in an average way, between the covers of Harper's New Monthly Magazine. We find that the issue for April which is before us, is No. CCCXXIII Vol. LIV. This represents no less than 27 years of publication—during which time a new volume has appeared once in every six months. As times run this favorite magazine is no longer new. The present number opens with an illustrated paper on "Furniture and its Decorations in the Renaissance." It strikes us that the best and most tolerable fashion plates are these which introduce to us, and instruct us in, the manners and customs of the most polished and cultured peoples of whom we have any knowledge. The new birth of the arts which was a characteristic impulse of the 16th century was so replete with splendid efforts in painting, pottery, sculpture, tapestry and the kindred arts as to make its productions a constant theme of enthusiastic research and delightful study. The paper alluded to is very richly illustrated with cuts from superb photographic representations taken in Paris. "Raphael's St. Cecilia" is the title of a clever bit of poetry by someone whose name is not appended. (Harper's—unlike the other monthlies continues to preserve the impersonal character of the greater part of its articles.) "Our Familiar Birds" is the title of an illustrated chapter on birds which, the writer confesses, "nested around the house"—the same house being "on the main avenue, near the business part of the village, and surrounded by a thick grove of native oaks and other trees." On page 664 we have the third paper on that very fascinating subject, "A Summer Cruise among the Atlantic Islands." This takes us among the vines and groves of the Cape Verde Islands and renews our acquaintance with The Peak of Tenerife. "A Song of the Garden" is a bit of fanciful love poetry. "Old Willy" is a short story full of startling situations; and "The Chimera of the Coach" opens with the important statement that "Miss Clara Griselda Vere de Vere was rather an airy young lady." One might guess so, not unjustly, from her name. "Liberal education for Women" is a disquisition which we suppose it is our duty as a humble teacher of the public mind, to read. Will try and wade through and report. Not heeding the fact that "The Popular Science Monthly" for March had already given us quite a full review of Mr. Samuel Stoll's "Life of a Scotch Naturalist." Harper's reproduces Thomas Edward's grim old face and treats us to a pleasant resume of the subject of that eccentric bug-hunter's life and times. It is good honest reading—a real romance of real life. "Uncle Zeke's Conscience" deals with some story materials discovered "on the banks of one of the numerous creeks that indent the shore of the Lower Chesapeake"—uncle Zeke being an old dakey. "The Rain" is a bit of descriptive poetry "suggested by one of Chopin's preludes." On page 711 is opened Chap. XX of A Woman Hater. A paper entitled The Public Libraries of the United States is a review of Report upon the matter indicated issued from the Department of the Interior, Bureau of Education. This, we judge from a hasty glance, is a very interesting article. Vain Waiting, is another clever little bit of poetry. Married People, is a story, which commends itself to the impatient reader for and because of the fact that it has its beginning and ending in this number. Julian Hawthorne's Garth is continued. Here follows a Popular Exposition of some Scientific Experiments, illustrated. Vittoria Colonna, is the title of a short column of verses. Chapter XXII of Erema; or My Father's Sin, is begun upon page 751. Tenoriffs, (which adds an f to the spelling elsewhere given), is the longest poem in the book. Then follows the Editor's Easy Chair, Scientific Record. The fun of The Editor's Drawer is not as repulsive as usual. It contains several fairly humorous cuts.

We wish the publishers of The Galaxy would either cut the leaves of that sprightly periodical or leave them alone. They have a way of maoeacting the top edges with some sort of sawing process which is intended as a splitting of the folded places, but the result is a very imperfect device where the parties seem "thicker" than before but not nearly so decently united. We do not think, with an unalloyed sense of hearty not the rather sneering tone which the Galaxy takes on in dealing with the concerns of the North Republicans; but we do like the writers upon French subjects. Henry James and Albert Rhoads have written some very pleasing and instructive papers for this periodical upon matters and things done and maintained in France. The former has, in this number, an interesting article on The Theatre Francaise. Page 550 introduces us to Chap. VII of Jus-

tin McCarthy's Miss Misanthrope. Sylvester Baxter contributes a poem which he entitles "Tried and True." "About Cigarettes" is a sort of memoir of the not always pleasant-smelling paper cigars now so much in vogue. We pause and look long enough to imbibed the information that "the principal cigarette factory (in Cuba) is, as is well known, the factory of M. Busini." "The Hard Times" is a rather jerky and emotional paper on the prevailing distresses in the labor market. We do not believe, from its croppings, that it will pay to work. "The Two Worlds" is a piece of poetry by Elise Hopkins. "Sister St. Luke" (which suggests the possibility of a Brother St. Bridget), is a story by Constance Fennimore Woolson. Mary Bayard Clarke seems to have patterned her poem of Cleopatra's Soliloquy upon Story's well known poem. Mr. Frederick Whitaker gives us a second chapter on Dramatic Canons, which is succeeded by a short poem by Margaret J. Preston entitled Saint Lambert's Coat. Grant White gives us a chapter on English Traits, in his vigorous diction. A Dead Vahti is the title of a story by Louise Stockton. Mr. Titus Munson Coan, of whose writings we are still in doubt as to whether to like or dislike them, gives us a chapter on Being Born away From Home. The Home of My Heart is the name prefixed to some stanzas by W. F. Bourdillon. "The South, Her Condition and Needs" is a crude bit of political essaying by Mr. J. L. M. Curry. And here follows Drift Wood, Scientific Miscellany and other editorial matter. A very excellent number of this welcome magazine.

TELEGRAPHIC.  
New York, March 22.—The Times Washington special on the Cabinet meeting says the material of the commission was determined upon, but its personnel cannot be ascertained until an acceptance be received from those whom the President will to-night invite by telegraph to serve upon it. It will represent all shades of political opinion, and, if possible, it will be national in its geographical make-up. The gentlemen to be selected will be men well-known to the country, and distinguished rather for their learning and patriotism than for prominence in partisan politics. A number of gentlemen were named for this service during the Cabinet meetings, but no selections were made. The Vice President, before leaving Washington, was selected to serve, but he declined. Judge Davis has also been mentioned as one of the Commissioners, but it is known that he has not been invited, and would not serve if he should be. It is probable that the names of those who constitute the commission will be announced to-morrow. The President in an interview to-day said that for the past eight years there had been a great degree of reaction, retrogression, lawlessness, violence and murder in the South, and especially in Louisiana, where there were so many mixed races that violence resulted almost spontaneously; that the worst thing that could happen to the South would be the success of the Democratic party; that either the few troops that are there should be taken away, or more put on duty; that Packard's case had greatly improved to day judging from the dispatches he had seen, showing a weakening of Nicholls' forces, and that if Packard's case continues to improve the commission to be appointed would see that and so report, which would simplify matters very much; that the Democratic party of the South had better be broken up if possible, and the color line obliterated by a new and better organization of the Republican party; that men who were in the White League and KKKKK organizations were lawless and ignorant, not respectable and intelligent; that out of the better class a valuable addition to the Republican party in the South needs to be made, and he thinks it can be and that at all events it would be well to try and put an end to all disorder in the South by removing its cause, the color line. He would hold himself ready in case these views were found leading him in the wrong direction to change them speedily. The President continued: "The freedmen will find me their friend, but they need other friends from among those who are now regarded as their enemies because of the race line." The President expressed himself in terms of great charity for the South and yet he was emphatic in his declaration that there should be law and order in that section. The President further said that in no event would the troops be withdrawn, but, on the contrary, Grant's last order respecting the status quo would be maintained until the Commission returned and reported and a fixed policy should be agreed upon. The President intimated that if Packard was not acknowledged Nicholls not be, but probably a new election would be held.

San Francisco, March 22.—The Chronicle and the Mail publish what purports to be abstracts of John D. Lee's confession, concerning the Mountain Meadows massacre and other matters connected therewith. This is taken from a confession made by Lee to his attorney, W. W. Bishop, of Pioche, shortly after his conviction, in September last, and was made at a time when Lee had hopes of escaping the sentence of death. Since that time Lee has written another and different confession with the certainty of death before him, which will not be made public until after his death. It is said to vary materially from that given to Bishop, which was written in the hope of effecting a diversion in his own favor, while that which will be published after his execution will contain the true facts in the case, unbiassed by either hope or fear, in the presence of the certainty of his fate. The present confession throws the responsibility of the crime on the Mormon priesthood, by whom orders it was committed, but does not directly implicate Brigham Young as ordering the massacre, though it states that he subsequently endorsed it.

Gen. Bidwell of China has telegraphed that there have been five arrests on suspicion of complicity in the Chinese troubles so far.

OPINION OF MR. JUSTICE SAWYER IN THE PRISON TITLE CASE.  
In the United States Circuit Court, Ninth Circuit, District of Nevada.  
J. H. Adams et al vs. L. R. Bradley et al.

Judge Lorenzo Sawyer delivered the following oral opinion upon the question of admitting in evidence the judgment roll in the case of Adams D. Treadway vs. James S. Slingerland:

With reference to the admissibility of this record the only question is in my mind is whether the judgment in that case can under any circumstances be binding upon the State of Nevada. In my judgment, if not binding upon the State of Nevada, it can have no relevancy to the issues in this case.

It is a well settled principle that the State cannot be sued without its express consent given by law. Upon that question there is no conflict in the authorities. But the exact point which arises in this case has never been determined, by any court that I am aware of. That is to say, it has never been decided that if an officer of the Government is a trespasser and he is sued for the trespass and the judgment enforced against him, although the State may be affected by such judgment that it is concluded by the adjudication. There is no decision so far as I am aware, or to which my attention has been called, determining the effect of that judgment as against the State, whether it adjudges or conclusively determines its rights.

If the State can be bound by the judgment against Slingerland, it must necessarily have been substantially and in fact, though not in form, a party to the action. And yet it cannot be sued without its express assent given by law. And where the State cannot be sued, the decisions are to the effect that the fact of its having been sued and the State's attorney having in fact appeared, does not change the phase of the question, at all. It has been decided in at least two cases by the Supreme Court of the United States that the appearance by the United States attorney without authority does not give jurisdiction over the United States. In the case of the United States vs. McLeone (4 Howard 286) an action was brought in relation to certain moneys and "the District Attorney of the United States answered the bill and the matter of payments was referred to a master who reported a balance against the United States, after paying the judgment. On this report, the District Judge holding the Circuit Court decreed a perpetual injunction, and that the United States should pay the costs. The Supreme Court held that there was no jurisdiction of this case in the Circuit Court as the Government is not liable to be sued, except with its own consent, given by law. Nor can a decree or judgment be entered against the government for costs."

So that notwithstanding the fact that the attorney of the United States appeared without making the objection in the court below and the case went to judgment, the judgment was held to be void for want of jurisdiction. That decision is affirmed in the case of Hill et al. vs. the United States et al. (9 Howard 386.) In that case a bill was filed on the equity side of the court by Hill and the other complainants against the United States, to enjoin a judgment obtained against the complainants by the United States. The United States Attorney at first answered in extenuation to the merits thus appearing and giving the court all the jurisdiction that could be given by a voluntary appearance. A motion was afterwards made by the United States Attorney to dissolve the injunction and dismiss the bill, as to the United States, for want of jurisdiction as to them. In the decision of this case the Supreme Court says:

"The question here propounded without any necessity for recurrence to particular examples, would seem to meet its solution in the regular and best-settled principles of public law. No maxim is thought to be better established or more universally assented to, than that which ordains that a sovereign, cannot ex delicto be amenable to its own creatures, or agents employed under its own authority for the fulfillment merely of its own legitimate ends. A departure from this maxim can be sustained only upon the ground of permission on the part of the sovereign, or the government expressly declared, and an attempt to overrule or to impair it on a foundation independent of such permission must involve an inconsistency and confusion, both in theory and practice, subversive of regular order or power.

Without dilating upon the propriety or necessity of the principle here stated, or seeking to multiply examples of its enforcement, we content ourselves with referring to a single and recent case in this Court, which appears to cover the one now before us in all its features. We allude to the case of the United States vs. McLeone, in 4 Howard, 286, where it is broadly laid down as the law, that a Circuit Court cannot entertain a bill on the equity side of the Court, praying that the United States may be perpetually enjoined from proceeding upon a judgment obtained by them, as the Government is not liable to be sued, except by its own consent given by law."

Unless consent is given by the law to a suit against the State, or Government, the Court under those decisions has no jurisdiction, and the fact that the State Attorney appears voluntarily to contest it, does not give the Court jurisdiction, where it was before without jurisdiction.

The Supreme Court in those cases declares the judgments void for want of jurisdiction, notwithstanding the fact that the attorney of the government assumed to appear for it. It is held by those authorities that the officer may be sued in his individual capacity. The case of Osborn vs. the United States Bank (9 Wheaton) affords as good an illustration as any other upon this point. There the Treasury was sued and an injunction applied for restraining the defendant from disposing of the money seized by him on behalf of the State. Finding the action there was a change in the Treasurer. Counsel were evidently aware of the effect of this change upon the case, because a supplemental bill was filed, making the successor in office a party in order to bind him—thus recognizing the principle that he would not be bound by a judgment against his predecessor. But in that case the money had not become mingled with the funds of the State. It had been kept separate in bags by the former Treasurer, was transmitted by him in that manner, and was kept separate by his successor. They were used, individually and it was held that

the action could be maintained. Now undoubtedly if a judgment had been recovered against the Treasurer he would have been personally responsible for that money; he had committed a breach of the law; the State under which he acted having been declared unconstitutional. He would have been personally responsible for the trespass. But the court sustained this bill for an injunction on the ground that the money was kept separate in his control and could be identified as the specific money seized. It is said in the decision that it might have been reached by an action of detinue. The identical money could be reached in the hands of these parties. If the money had been mingled with the moneys of the State, and had so lost its identity there is nothing in the decision to indicate what the effect of the judgment against the treasurer would have been upon the rights of the State. At all events there is nothing to indicate that the judgment against these parties would have been a bar in an action by the State if the State had afterwards sued the bank for the amount of the tax. Of course, if the State had afterwards sued the Bank for the money, the adjudication upon the law would have been authority upon the law of the case. But the facts I apprehend would have been open to re-examination. There was a question of fact discussed in the case as to whether the testimony was sufficient to show that the money went into the hands of the second Treasurer, and the Court held that it was. But there is nothing to indicate that the matter would have been re-adjudicated in an action by the State against the Bank. In this case, if the State cannot be sued, as it cannot be, I do not see how it is possible that a judgment against one of its officers sued in his individual capacity can be conclusive upon the rights of the State, even though the State happens of the action and the Attorney General in consequence of that interest appears for the officer and assumes to defend him as his attorney, or otherwise. The Court still fails to get jurisdiction of the State. Where the officer is sued in his individual capacity, and the State cannot be made a party, I do not see how it is possible that the judgment against the officer can be binding upon the State as a matter adjudicated between the State and the plaintiff. A matter can be re-adjudicated only between the parties to the action and their privies. The case cited by counsel for the plaintiff from the 10th Wallace, giving a synopsis of what was determined in Osborn vs. the United States Bank, it seems to me indicates that there could be no valid judgment against the State. It is said by the Court: "In deciding who are parties to the suit, the Court will not look beyond the record. Making a State officer a party does not make the State a party, although her law may have prompted his action and the State may stand behind him as the real party in interest. A State can be made a party only by shaping the bill expressly with that view, as where individuals or corporations are intended to be put in that relation to the case. (Davis v. Gray, 16 Wall. 249.)"

If in an action against a State officer in his individual capacity for a trespass committed under color of his office, the State cannot be considered a party for the purpose of defeating an action on the ground that the State cannot be sued, it seems absurd to hold, that the State is nevertheless a party for the purpose of having its rights conclusively determined.

The case of landlord and tenant cited does not seem to me to be in point, because there the landlord is liable to be sued without his consent. If he appears and defends the suit it is his own act. He voluntarily and voluntarily becomes a party to the suit, and the Court having jurisdiction of the subject matter, and the party by his voluntary assumption of the defense, is bound by the result. The State cannot be made a party at all without its consent, and the assumed appearance of the District Attorney or Attorney General without express authority of law does not constitute a consent. I do not think the provision in the statute (in regard to the duties of the Attorney General) touches the question. It might be the duty of the Attorney General to appear and make the objection that the State cannot be sued. But it is a general law, such as exists in most if not all States defining the duties of the Attorney General to appear and defend the interests of the State in those cases where the State may be sued. And it may be desirable that he should appear and defend officers of the State, or even others, where the interests of the State may be affected, although the decision against the parties to an action might not be an adjudication conclusive upon the rights of the State. It may be a short, easy, and if successful, convenient way of protecting the State's interest and as such a proper course for him to pursue. However, this may be, it is clear that this section of the statute does not in terms, or by any reasonable implication, authorize private parties to sue the State, and we have seen from the authorities cited, that where there is no authority of law for suing the State an assumed authority of an Attorney of the State to appear does not confer jurisdiction over the State. A fortiori his assuming to appear for the defendants in defense of actions brought against private parties in their individual capacity who happen to be officers of the State, and to which the State is not and cannot be made a party, cannot confer jurisdiction to conclusively determine the rights of the State as against the State. If such could be the effect of the judgment, it must be on the ground that the State can indirectly in substance and fact be made a party when the law forbids her being made a party in form, and her rights may be determined in a case over which she has no control, for the defendants must have authority to control their own defense even if the defense is conducted by the Attorney of the State.

Under the view I take of the case, this is not an adjudication binding upon the State. As the State is not concluded I do not see how the present officers can be in privy with the prior Wardens, or how the State can be in privy with him. They can nothing from him, but the rights of the State upon which the defendants rely depend upon its own title, not derived from Slingerland, the former Warden. In my judgment the record is inadmissible.

If plaintiffs have a title they ought to recover their land. The point which they make is that the State is estopped from showing that they have not any title. They will be permitted

to show their title if they have any. I will say to counsel that my associate, Judge Hillyer, does not concur in the views I have expressed. There is a division of opinion between us. But as the law now stands the opinion of the presiding Judge prevails for the time being.

Bob Ingersoll started his Steinway Hall audience by asserting that if the Presidential election had not been determined by the Electoral Commission, and had been thrown into the House of Representatives "Samuel J. Tilden would not have been elected, but Rutherford B. Hayes would have been elected by Southern votes." He is further quoted, as follows:

I know what I am talking about. During the last Congress the Southern members, men who had fought against their country, held in their hands the future of the United States. With one word they could have plunged us into the hell of civil war. But they had had enough of war; they wanted peace. They preserved us, and I am willing to unite with them to preserve that priceless gift forever. (Applause.)

The Standard's Vienna dispatch reports that the Montenegrin troops are concentrating on the frontier, but will not attack the Turks. Prince Nicholas announces that he will start on the 26th for the camp of Medun. A Hungarian corps is concentrated at Beulane. General Despotovitch is marching on Banjaluka. A circular from Moscow urges all the Slavonian committees to raise fresh funds in aid of the Montenegrin war.

Senator Ferry says he holds over as President pro tem. on account of Vice President Wheeler having complied with the suggestions of Republican members, and did not, as is customary, leave the chair on the last day of the session until it closed. Had he vacated the chair a new election would have been necessary. Therefore, if both the President and Vice President should die, Ferry would succeed to the Presidency.

Thomas Briggins, who was before the Committee on Administration of Affairs of the Lunatic Asylum as a witness a year ago, and testified about the spirit of General Grant being at his bedside, has entered suit in the Circuit Court against the ex-President for false imprisonment and \$100,000 damages. He was arrested a month ago by the police for threatening General Grant, and sent to the asylum.

A delegation of Germans called upon President Hayes on Tuesday to congratulate and thank him for his recognition of the share of naturalized citizens in the welfare of the country, as shown in his nomination of Schurz. They afterward called upon Schurz.

Mrs. E. M. Daggett died in Philadelphia on Wednesday, after a brief illness. Her disease is reported "quick consumption." She leaves two beautiful children and a heart-broken husband. He and they have our heartiest sympathy and that of this entire community.

MARRIED.  
At Carson City, March 22, 1917, by Justice C. A. Withersell, Mr. James Pollock to Mrs. Rebecca Bowers.

NOTICE.  
THE MEMBERS OF THE GRAND Jury are hereby notified to assemble at the Jury Room on  
Saturday Morning, March 24th, At 10 o'clock. A full attendance is required. March 22, 1917. H. K. MARON, Foreman

TO WATER CONSUMERS.  
THE CARSON WATER COMPANY hereby notify their customers that they  
Must Not Use Water for Irrigation Or for any other than House Purposes.  
Without first applying at the Company's office and making special arrangement.  
CARSON WATER COMPANY.  
March 20, 1917.-41

Lake Tahoe Lumber Yard.  
THE FIRM OF DUNNING & CHASE is this day dissolved.  
The business will from this date be conducted under the firm name of DUNNING & HUNT. The new firm will pay all demands against and collect all bills due the old firm.  
DUNNING & CHASE.  
CARSON CITY, MARCH 14, 1917.

A GRAND BALL  
WILL BE GIVEN ON  
TUESDAY EVENING,  
APRIL 10, 1917,  
AT THEATER HALL,  
FOR THE  
Benefit of Catholic Church.  
TICKETS.....\$2.50  
Admitting Gentlemen and Ladies.  
The free will be returned, and every convenience possible will be provided for the comfort of those who may attend.  
Carson, March 13, 1917.

**GILLSON & BARBER**  
WHOLESALE AND RETAIL  
DEALERS IN  
GENERAL MERCHANDISE,  
WOULD RESPECTFULLY RETURN their sincere thanks to the citizens of Carson and surrounding country for the very liberal patronage bestowed upon their home since its establishment in our thriving and prosperous city.  
We are still at the old corner, Hower's building, with a large assortment.  
CONSISTING IN PART OF  
GROCERIES,  
PROVISIONS,  
GROUND FEED,  
GRAIN,  
CLOTHING,  
BOOTS and SHOES,  
HARDWARE and TINWARE  
STATIONERY,  
PATENT MEDICINES,  
LIQUORS,  
Etc.....Etc.....Etc  
Our facilities for accommodating those who may favor us with their patronage are better than ever. Long experience, ample stock, gentlemanly and obliging clerks, delivery wagon and eligible location, should be a sufficient guarantee that our establishment stands second to none.  
—ALSO—  
Agents for three of the best Fire Insurance Companies doing business on the Pacific Coast viz:  
LONDON ASSURANCE CORPORATION  
HOME INSURANCE COMPANY, OF NEW YORK, AND  
PHENIX INSURANCE COMPANY, OF HARTFORD.  
GILLSON & BARBER.  
Carson, May 9, 1916.  
**MASON & CO.,**  
IN CORBETT BLOCK,  
NORTH CARSON STREET,  
Carson City, Nevada.  
WHOLESALE AND RETAIL  
DEALERS IN  
Groceries,  
Provisions,  
Crockery,  
Glassware,  
Tinware,  
Canned Fruits,  
Butter,  
Lard,  
Grain,  
Coal Oil,  
And all articles usually kept in a  
**FIRST CLASS STORE**  
Of the highest and most reliable business in which they are engaged.  
Orders taken and Goods delivered to any part of the City  
Free of charge.  
Carson, May 1, 1916.